

REMARKS

In the **final** Office Action dated January 15, 2010, the Office noted that claims 1-3, 5, 6, 9, 10 and 14 were pending and rejected claims 1-3, 5, 6, 9, 10 and 14. In this amendment claim 1 has been amended, no claims have been canceled, and, thus, in view of the foregoing claims 1-3, 5, 6, 9, 10 and 14 remain pending for reconsideration which is requested. No new matter has been added. The Office's rejections are traversed below.

REJECTIONS under 35 U.S.C. § 112

Claims 1-3, 5, 6 and 14 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. In particular, the Office asserts that the claims use means language in a method claim. The Applicants have amended the claims to overcome the rejection.

Withdrawal of the rejections is respectfully requested.

REJECTIONS under 35 U.S.C. § 102

Claims 1, 3, 5, 9, 10 and 14 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Morris, U.S. Patent No. 6,328,567. The Applicants respectfully disagree and traverse the rejection with an argument.

According to the invention, an image of a movie of the

shade guide realized with inhibited luminosity and/or chrominance is displayed side by side and without separation with an image of the tooth of the patient to enable the practitioner to compare the both. The invention makes easy the comparison of the tooth of the patient with two neighboring samples of the shade guide. This problem is exposed on page 1, lines 13-14 of the Specification.

This problem is particularly crucial in the case where the tooth of the patient is particularly dark or particularly clear. These situations are dreaded by practitioners because the sensitiveness of the eye is limited in those extreme zones of shades.

The invention gives the opportunity for the practitioner to "visually displace", with the display on the screen according to the invention, those extreme zones of shade in zones where the eye is sensitive.

The invention effectively proposes to acquire an image of the tooth of the patient under automatic control of luminosity and/or chrominance. The acquisition of the tooth of the patient under automatic control enables to enhance the visibility by the eye of the shade nuances on the screen. Thus, typically, a dark tooth of the patient will appear visually clearer on the screen than in reality with the action of the automatic control. As, according to the invention, automatic control are then inhibited, the step of filming the shade guide is thus realized with chrominance and luminosity parameters adjustments reached during

the acquisition of the image of the tooth of the patient.

Thus, in the case of a dark tooth of the patient, with the invention, the darker shades of the shade guide will appear clearer on the screen than in reality. This would have also be the case with an active automatic control except that the comparison would not have been anymore possible because of the permanent changes applied on the chrominance and/or luminosity parameters by active automatic control. On the contrary, in the case of a clear tooth of the patient, the acquisition of this tooth of the patient will generate an automatic control that will make it appear darker on the screen than in reality. Once the automatic control inhibited, the acquisition of the shade guide will be such that the clear shades would appear darker on the screen than in reality.

As a consequence, the tool proposed by the invention enables to use the properties of the video camera in order to better distinguish the color shades than while realizing a comparison in reality. In fact, the video camera enables to adjust parameters of chrominance and/or luminosity before filming the shade guide. The shade guide is thus filmed in optimal conditions for shade around the shade of the tooth of the patient. This is real for the totality of the shade guide but particularly efficient for dark and clear shades because it enables the eye to better distinguish the difference than in reality where the sensitivity of the eye is not optimal for these

dark and clear shades. The comparison by the practitioner is rendered more accurate.

On page 3 of the Office Action, the Office asserts that "an inhibiting means for ***inhibiting automatic control of at least one of a luminosity and a chrominance of the camera (1),***" as in claim 1 is inherent. In particular, the Office asserts that "any basic or more advanced video camera inherently has a 'manual' function which inhibits automatic controlling of the luminosity and chrominance of the camera," (emphasis added) as in amended claim 1. The Applicants respectfully disagree that such a feature is found or even hinted at in Morris as to make the feature inherent. As the Federal Circuit stated in the case of *Transclean Corp. v. Bridgewood Services, Inc.*, 290 F.3d 1364, "...anticipation by inherent disclosure is appropriate only when the reference discloses prior art that must necessarily include the unstated limitation." 290 F.3d at 1373 (emphasis original).

Nothing in Morris requires the limitation of inhibiting automatic control of at least one of luminosity and a chrominance of the camera and therefore, the feature is not inherent.

On page 3 of the Office Action, the Office asserts that Morris, Fig. 9, dental tab 109 discloses "filming the color coding ring (9) and ***displaying on the screen (7) the image (7b) of at least one sample (91, 92, 93...9n), so that this image (7b) lies side by side joined to each other without separation with the frozen image (7a) of the set-of-teeth element so as to allow***

*the user to visually compare the frozen image (7a) of the set-of-teeth element (3) with the image (7b) of the sample,"* (Emphasis added) as in amended claim 1.

However, there is not a display of two different entities in Morris. This is contrary to the features of the claims.

There is also no disclosure of any distinct acquisitions of, on one side, a frozen image of the tooth of the patient with a video camera, and, on the other side, of a film of sample(s) of the shade guide with the same video camera than for the image of the tooth of the patient but where the automatic control means have been inhibited.

In the absence of the inhibiting step between the acquisition of the tooth of the patient and of the step of filming, the display of the two image entities is not possible. This problem is not at all disclosed in Morris where the sample of the shade guide and the tooth of the patient are displayed on a single and common image.

The features of the claims consisting in using a video camera to acquire and to froze an image of a tooth of patient, in inhibiting the automatic control of chrominance and/or luminosity, in using the same video camera with inhibited automatic control to film a shade guide and then to display the frozen image and at least one filmed sample of the shade guide side by side and without separation are absolutely not disclosed

nor suggested in Morris.

Claim 9 recites similar features. For at least the reasons discussed above, claims 1 and 9 and the claims dependent therefrom are not anticipated by Morris.

Withdrawal of the rejections is respectfully requested.

REJECTIONS under 35 U.S.C. § 103

Claims 2, 5 and 6 stand rejected under 35 U.S.C. § 103(a) as being obvious over Morris. The Applicants respectfully disagree and traverse the rejection with an argument.

The Applicant submits that the independent claims are allowable for the reasons discussed above. Therefore the dependent claims are likewise allowable.

Withdrawal of the rejections is respectfully requested.

SUMMARY

It is submitted that the claims satisfy the requirements of 35 U.S.C. §§ 102 and 103. It is also submitted that claims 1-3, 5, 6, 9, 10 and 14 continue to be allowable. It is further submitted that the claims are not taught, disclosed or suggested by the prior art. The claims are therefore in a condition suitable for allowance. An early Notice of Allowance is requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any

overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON

/James J. Livingston/  
James J. Livingston, Jr.  
Reg.No. 55,394  
209 Madison St, Suite 500  
Alexandria, VA 22314  
Telephone (703) 521-2297  
Telefax (703) 685-0573  
(703) 979-4709

JJL/fb